

San Francisco Bay Conservation and Development Commission

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July 14, 2022

TO: Enforcement Committee Members

FROM: Matthew Trujillo, Enforcement Policy Manager (415-352-3633;
matthew.trujillo@bcdc.ca.gov)

SUBJECT: Approved Minutes of July 14, 2022, Enforcement Committee Meeting

1. Call to Order. The meeting was held in a hybrid format. Three physical locations were available:

- Metro Center, 375 Beale Street, San Francisco 94105, 415-352-3600
- 1195 Third Street, Suite 310, Napa 94559
- 675 Texas Street, Suite 6500, Fairfield 94533

A Zoom link was also provided on the website.

The meeting was called to order by Chair Gilmore at 9:31 a.m.

2. Roll Call. Present were Chair Gilmore and Commissioners Eisen, Vasquez and Wagenknecht.

Chair Gilmore stated that a quorum was present.

Staff in attendance included Enforcement Analyst, John Creech; Legal Secretary, Margie Malan; Lead Enforcement Attorney, Brent Plater; and Enforcement Policy Manager, Matthew Trujillo. Also in attendance was Shari Posner on behalf of the Office of the Attorney General.

3. Public Comment. Chair Gilmore announced that SB 189, which allows BCDC to continue to conduct virtual meetings, was just passed by the Legislature. The Enforcement Committee will continue to avail itself of this option until further notice.

There were no public comments.

4. Approval of Draft Minutes from the June 22, 2022 Meeting.

Commissioner Eisen moved for approval of the June 22, 2022 meeting minutes. Commissioner Wagenknecht seconded. The motion carried with a unanimous hand vote of 4-0-0 with Commissioners Eisen, Vasquez, Wagenknecht, and Chair Gilmore voting "YES", no "NO" votes, and no "ABSTAIN" votes.

5. Enforcement Report. Mr. Trujillo gave an update on cases; the previous update had been June 22, 2022. Staff had opened four cases and closed four cases. There are 95 open cases.

Mr. Trujillo reported that staff is making progress on backfilling the position vacated by John Creech. The job vacancy has been posted and is being advertised as a limited-term entry-level Coastal Program Analyst I position. It would be ideal for someone just out of college or someone without much work experience who is looking to begin State service. The work will be mostly done remotely.

Questions and Comments

Commissioner Eisen commented that she had appreciated Mr. Trujillo's presentation at the Commission meeting the previous week. She asked about the charts and visuals: they had been hard to read because of the light print. Next time maybe the resolution could be higher.

6. Committee Briefing by the City of Sausalito (Enforcement Case ER2018.018.00). Chair Gilmore stated that the City of Sausalito would present a progress report on its implementation of a December 2020 City of Sausalito/BCDC Settlement Agreement to address anchored-out vessels and restore the subtidal habitat impact of those vessels to Richardson Bay.

Mayor Janelle Kellman introduced the presentation. City Manager Chris Zapata then spoke about waterfront and vessel management. The City has applied for some funding from the State of California and will know the outcome in August. Currently in play is a third non-legacy vessel which is large, partially concrete, and potentially has hazardous materials on board. There are no new vessels on the waters to report. The police department continues to make patrol checks.

Mayor Kellman reported on regional coordination of planning for housing. The 6th Housing Element is a public process to plan for 724 housing units divided into four income categories. The City expects the plan to be reviewed at the end of July into August. The State mandate is that it will be adopted in January 2023. The City is also looking into SB 9, which allows adoption of an ordinance to implement ministerial "by-right" regulations for new housing units – a density effort from the State. Sausalito is about two square miles in total, so 724 units will be quite a feat.

Mayor Kellman reported that the City has developed Objective Design Standards that would allow facilitation of new housing units, also by establishing "by-right" ministerial regulations to streamline housing projects.

In addition, a subcommittee is looking at the historic machine shop in the waterfront area; they are currently in negotiation with the General Services Administration for the surplus and acquisition of this area. The City would like to relocate its Corporation Yard to this area, then convert it to affordable housing.

The City is looking at a number of different policies, listed below.

- Ensure that the City's water-based recreational and residential areas are accommodating their fair share of demand for affordable housing generated by water-based and waterfront workers.
- Work with BCDC in adopting standards and approaches that reflect the housing goals and objectives of the Association of Bay Area Governments (ABAG) to help the City to meet State-mandated housing requirements.
- Continue to prioritize the needs of the unhoused and persons at risk of becoming unhoused, as well as existing anchor-outs, liveaboards, etc., with a focus on permanent affordable housing opportunities.

Mayor Kellman noted that should BCDC be open to conversations around more water-based housing, the City believes this would be an excellent opportunity.

The City intends to work with BCDC and encourage involvement from State agencies to increase its residential capacity. If the City can allow the marinas to increase their capacity of liveaboards and houseboat berths by 5%-15%, the City can then look more closely at a rent control program for new berths.

The City intends to work with Marin Housing and regional affordable housing providers to develop a model water-based housing program.

Mayor Kellman reported on the City's action to provide housing opportunities. 18 people live at a homeless encampment located on the tennis courts at Marinship Park. About half of them are known to the City to either have or had vessels in waters managed by the Richardson Bay Regional Agency (RBRA). The City has spent close to \$1.5 million to manage the encampment. The long-term solution is to find transitional and permanent housing for encampment members. City staff works daily with the County to advocate for them and find placement for them. They welcome BCDC as a partner in developing long-term solutions.

The County has approved \$500,000 in grant funds for homelessness to the City of Sausalito. The State, through Senator McGuire's office, has indicated that they will match those funds. The City has not yet seen the funds, which they will use to support camp management, most significantly to bring a Housing Manager to the encampment.

Marin County requested \$5 million from the State as well. The City of Sausalito would like to begin a pilot program to bring underutilized Accessory Dwelling Units (ADUs) online as a way to increase the number rapidly of

housing units under the Marin Housing Authority homeless voucher program. The City also allocated around \$200,000 to renovate the City-owned Dorothy Gibson House to provide housing. The City will continue to seek grant monies to support long-term housing needs.

Eelgrass Consultant Robert Mooney reported on eelgrass restoration and damage avoidance. Eelgrass restoration and damage avoidance has been ongoing in the following ways:

- Quantifying the damage
- Developing a plan to take care of the damage
- Monitoring restoration efforts

Damage assessment determined that approximately 6.28 acres of eelgrass had been damaged in Sausalito waters as a result of anchor-outs.

To avoid and minimize future damage, memos had been provided to BCDC in October 2021 that outlined measures taken, including enforcement actions and removal of vessels. The memo recommended to continue the implemented actions, to establish additional no-anchor zones, and to evaluate locations for any remaining vessels.

A restoration plan was recently completed that had been the major outstanding item between the City and BCDC. It was submitted June 30 and establishes potential restoration areas, identifies methods, and provides a schedule to meet project milestones over a 10-year period.

Mr. Mooney showed aerial photographs of eelgrass that has recolonized over the past few years as a result of the enforcement actions and removal of vessels in City waters. Acreage at Dunphy Park has gone from 5.1 in 2019 to 11.77 as of April 2022. The Marina Plaza acreage has gone from 4.76 to 5.47.

The restoration approach was to discern the areas most suitable for eelgrass, then to overlay on that map the eelgrass distribution to determine where it could be restored. The major limiting factor for eelgrass is sunlight: the deeper the water, the less likely it is to be able to support eelgrass. Accordingly the efforts for additional restoration were focused on the Dunphy Park area. Some areas will continue to passively support and grow additional eelgrass if given time, but per the agreement between the City and BCDC, the City needs to take actions to bolster eelgrass resources and ensure that they are in place long-term.

Mayor Kellman listed the City's reporting efforts done to fulfill the Settlement Agreement.

Questions and Discussion

Mr. Trujillo commented that City staff has been a great partner for BCDC to work with.

Commissioner Wagenknecht concurred that the partnership is a good one and the City of Sausalito is making more progress than he was expecting.

Commissioner Eisen was pleased with the excellence of the report given by the City. The issues of eelgrass restoration, anchor-outs, and housing that they face are also being experienced by other communities around the Bay. Commissioner Eisen asked to what extent their ideas about housing and eelgrass restoration are being shared with other communities. Mayor Kellman answered that she is a member of a tri-city effort with Novato and San Rafael that meets to brainstorm ideas on how to support and encourage the County to develop new transitional and permanent housing. It takes a communal effort. In May, there had been a multi-jurisdictional gathering in San Rafael addressing the homeless. Dr. Sam Tsemberis, founder of Housing First, had explained what the cities are and are not doing well. Further, in addition to the herring run, this year has had a large sardine run. Mayor Kellman takes every opportunity she can to explain to Audubon, the Sierra Club, the community, public agencies, nonprofits, and NGOs, that this is a huge priority to the City of Sausalito.

Public Comment

Rebecca Schwartz Lesberg, Coastal Policy Solutions, commented regarding the large legacy vessel that Mr. Zapata had mentioned: at yesterday's Working and Derelict Vessel Working Group meeting coordinated by the U.S. Coast Guard, they had spoken about large vessels being successfully dismantled at Mare Island Shipyard.

Anne Libbin asked about Mr. Mooney's slide that appeared to show an area that had eelgrass in 2019 and does not in 2022. Why did that area not appear on the slide showing places appropriate for restoration? Mr. Mooney answered that the area was growing at a depth that was at the lower range of what they see as suitable for eelgrass. They do see some natural variation in the eelgrass bed over time.

Chair Gilmore asked for a motion to close the Public Hearing. Commissioner Eisen so moved. Commissioner Wagenknecht seconded. The motion carried with a unanimous hand vote of 4-0-0 with Commissioners Eisen, Vasquez, Wagenknecht, and Chair Gilmore voting "YES", no "NO" votes, and no "ABSTAIN" votes.

7. Committee Briefing by the Richardson Bay Regional Agency (Enforcement Case ER2010.038.00). Steve McGrath, Interim Executive Director of the Richardson Bay Regional Agency (RBRA), began with a chart presenting a

distillation of the agreement executed with BCDC by RBRA in 2021. It listed milestones and necessary actions.

The program to install 15-20 moorings in the anchor zone is in process. At the May meeting, the RBRA Board decided to move forward with the lower end of the designated mooring field with 15 moorings. So far the RBRA has spent \$60,000 on the project; they have budgeted \$165,000 in FY 23 to complete it. The project was geared toward vessels in the Safe and Seaworthy program. The structural requirements for a vessel are different on a mooring than on an anchor, so no vessel will go on a mooring unless it has been inspected and approved by the Harbormaster. There may be only five or six that are suitable. The RBRA will be purchasing five at a time at a cost of \$30,000 per temporary mooring.

In June the Board approved a vessel buy-back program. While the goal is to remove all illegally anchored vessels by October 2026, incentives are better than enforcement. With \$100,000 budgeted in FY 23 for this program, the RBRA will buy a vessel at \$150 per linear foot. Restrictions apply. Currently six vessels are completing the paperwork. It should be possible to abate 19 vessels in 2023. If there is more demand, the RBRA will pursue other funding.

The RBRA is updating its Ordinance Code. For the Code of Federal Regulations, the U.S. Coast Guard is waiting to see the updated RBRA Ordinances.

The RBRA is working with Coastal Policy Solutions and Audubon on eelgrass restoration. Funding is by the Ocean Protection Council and the National Oceanic and Atmospheric Association (NOAA). A full report will be made to the RBRA Board in September, after which RBRA will be happy to come back to the Enforcement Committee with a presentation.

In 2021 the RBRA measured 205 acres of eelgrass. Mr. McGrath showed low and high damage estimates for 2017 and 2021. Although the number of vessels decreased from 94 vessels to 53, damage to the eelgrass increased.

In August 2019 there were 192 vessels on the water. There are now 71. The closer together the number of people on the water matches with the number of vessels, the more difficult it becomes to change the picture on the water. Unoccupied or abandoned vessels allow for dramatic drops in numbers.

Mr. McGrath reviewed milestones in the Agreement:

- By October 15, 2023, all post-2019 vessels should be gone. Currently there are 14.
- There are four floating homes currently on the water.
- By October 15, 2024, there should be no vessels in the Eelgrass

Protection Zone. Currently there are 53.

- By October 15, 2026, all pre-2019 vessels should be gone. Currently there are 51.
- By October 15, 2026, all occupied Safe and Seaworthy vessels should be gone. Currently there are 10.
- Currently there are 57 people on the water.

The challenges in housing are case management, vouchers, and marinas. RBRA is seeking funding to bring on a case manager, initiate a pilot program with vouchers, and work with BCDC to develop a plan for affordable housing.

Marinas are restricted to using 10% of their capacity for liveaboards. RBRA is locating marinas who are willing to make applications to increase that number. However, even if there were slips available in marinas for the anchor-out community, the condition of the vessels on the water cannot be ignored. Marinas have standards: vessels must be insured, seaworthy, and registered. That is not the case for the vast majority out on the water.

Mr. McGrath pointed out another possible challenge that comes from the Oyster Cove Marina in South San Francisco. All 109 vessels there have been notified that they have to leave by October 2022.

Questions and Discussion

Mr. Plater asked about getting the legal designation of the anchorage changed in the Code of Federal Regulations. The Coast Guard controls that, and in the future it may describe the Eelgrass Protection Zone as a lawful place for visiting boats to anchor. In order to change that regulation, the Settlement Agreement states that the RBRA needs to file a petition with the Coast Guard. Mr. Plater recommended that the RBRA do this. Mr. McGrath responded that when the RBRA adopts the new ordinances, the Eelgrass Protection Zone will be defined by metes and bounds and have restrictions placed on it. The existing CFR does delegate to the RBRA the authority to enforce its regulations on Richardson Bay. At this point the Coast Guard believes that the existing CFR is sufficient. The RBRA will revisit this issue in August, then take it up with the Coast Guard.

Commissioner Eisen asked if the presentation slides are shown to Enforcement Committee staff before the Committee sees them. Mr. McGrath answered that the presentation had been sent just yesterday. Commissioner Eisen suggested that the slides be numbered, and asked about the aerial eelgrass photograph slide showing the circular patterns between 2017 and 2021. Is the goal to show the Enforcement Committee a slide in 2026 of that area that has no boats present and eelgrass restoration proceeding in all the

circles? Mr. McGrath answered that through their consultant, they do regular flyovers of the area and take pictures so that they have ongoing photographic evidence. RBRA would very much like to show an aerial slide in 2026 with only transiting vessels anchored in the anchor zone, no vessels in the eelgrass zone, and healthy eelgrass regeneration taking place. RBRA will make the photographs a part of ongoing presentations.

Commissioner Eisen asked about the slide showing a graph of the vessel count since 2019. Mr. McGrath explained that every vessel on the water is unique in terms of ownership and whether people live on the boat. The RBRA targets the unoccupied vessels – because of the housing situation, they cannot easily take occupied vessels unless the resident has somewhere to go. The Harbormaster goes out on a regular basis and tags unoccupied vessels as marine debris if appropriate. Often, someone pops up and says that they are living on that vessel. At this point RBRA is trying to avoid overt legal enforcement action. They follow procedures. With the new ordinances, they will have many more tools with which to address those 14 vessels in particular. This is a critical piece.

Jim Malcolm, RBRA Harbormaster, added to the explanation of the disparity between the anchor-out numbers of 71 and 57. Between four and five people actually have multiple vessels on the anchorage. Harbormaster Malcolm considers a truly unoccupied vessel to be anchored with no one living on it. He gave an example of an owner of a vessel that has three other vessels rafted up to it. There is a gray area in the delta of the numbers between 71 and 57. Also, there is a porousness between the City of Sausalito anchorage and the RBRA anchorage.

Commissioner Eisen thanked RBRA for keeping an eye on the Oyster Cove situation. She asked about any regional effort to ensure that it does not cause problems somewhere else. Mayor Kellman and Mr. McGrath were not aware of any. Ms. Schwartz Lesberg stated that the Abandoned Derelict Vessel Working Group is very much aware of the situation; it is a regional coordination between every law enforcement agency, the State Lands Commission, California Department of Fish and Wildlife, the EPA, the Coast Guard, and representatives from marina owners who all meet quarterly to coordinate on this issue, which spans many jurisdictions. There are 14 liveaboards currently in that marina, and if they show up elsewhere they will be tracked.

Commissioner Eisen asked if any thought might be given to water-based housing as a solution.

Commissioner Wagenknecht commented that it would be helpful if BCDC could do anything about the housing situation. In addition, for discussions such as this the Zoom gallery orientation would be helpful, as would numbering

the slides.

Public Comment

Chair Gilmore noted that so far, the Enforcement Committee had not received any written comments on this item.

Ms. Schwartz Lesberg followed up on Mr. Plater's suggestion about the official petition. She is working very closely with the San Francisco sector of the Coast Guard. Offering them draft language and justifications for what will eventually go into a petition, if that is the right move, cannot happen until the ordinances are updated. Further, she is very sensitive to relationship-building there. If they consistently say that an update is unnecessary, sending them a petition that will simply be denied may not be the best course of action – responding to a petition is a lot of work for them. One of their concerns is that the way the CFR reads now is to give all jurisdiction to the RBRA.

Mr. Plater noted that there are two parts to the CFR: a metes and bounds description of the lawful anchorage, and a reference to the local ordinances – that boaters check in with them before anchoring. The part of the CFR that needs to be changed is the metes and bounds description of anchorage. It creates a confusing overlay of federal law and local law. Mr. Plater expressed his disagreement with the RBRA's position on the requirement to update the CFR.

Mayor Kellman referenced the Schoonschip project in Amsterdam, a fascinating opportunity for water-based housing. She also noted that at the special RBRA meeting on July 1, they represented that they were not going forward with the mooring field. She sought confirmation from Mr. McGrath.

[Commissioner Vasquez asked if the discussion was now straying afield. Ms. Posner agreed that the discussion of the CFR was not an agenda item.]

Mr. McGrath confirmed that the item in front of the RBRA Board on July 1 was to recognize the cost for mooring and the opportunity for a better use of funds. It is not RBRA's place to decide not to complete a significant component within the agreement executed with BCDC. The mooring field project has not stopped.

Mayor Kellman commented that it sounded as if RBRA is waiting for BCDC to align with their position on not moving forward with the mooring field. She asked if the City of Sausalito could be kept in the loop regarding the final resolution. Chair Gilmore affirmed that staff would keep them apprised.

Anne Libbin asked about the slide showing an aerial view of the eelgrass beds in RBRA waters. It seems to show a new boat and a new bald area. Is there an ability to move new vessels to areas where damage to eelgrass has already been done? Mr. McGrath answered that the people on those waters are very familiar with the terms and deadlines of the agreement. RBRA is

anxiously waiting for the update to the ordinances in order to provide more tools in their toolbox; the ordinances as currently written do not address the eelgrass.

Ms. Schwartz Lesberg added that the boat may have already been anchored in the eelgrass and wanted to reset their anchor. A new eelgrass scar can happen within 12 hours. This highlights the importance of getting everyone out of the eelgrass as soon as possible.

Chair Gilmore asked for a motion to close the Public Hearing. Commissioner Eisen so moved. Commissioner Wagenknecht seconded. The motion carried unanimously with a unanimous hand vote of 4-0-0 with Commissioners Eisen, Vasquez, Wagenknecht, and Chair Gilmore voting "YES", no "NO" votes, and no "ABSTAIN" votes.

8. Public Hearing and Vote on a Settlement Agreement between the Port of Oakland and BCDC (Enforcement Case ER2019.026.00)(PDF).

A verbatim transcript is available for this agenda item.

9. Adjournment. Chair Gilmore entertained a motion and a second to adjourn the meeting. Commissioner Wagenknecht so moved. Commissioner Vasquez seconded. The motion carried with a unanimous hand vote of 4-0-0 with Commissioners Eisen, Vasquez, Wagenknecht, and Chair Gilmore voting "YES", no "NO" votes, and no "ABSTAIN" votes.

Chair Gilmore adjourned the meeting at 11:26 a.m.